

IN THE COURT OF APPEALS OF TENNESSEE
AT NASHVILLE
October 1, 1999 Session

THOMAS EDWARD KNUTH v. SANDRA MARIE KNUTH

**Appeal from the Circuit Court for Davidson County
No. 98D-2257 Muriel Robinson, Judge**

No. M1999-02808-COA-R3-CV - Filed May 2, 2001

This appeal involves a procedural quagmire arising from an interstate divorce and custody battle. The parties lived in Tennessee until the wife and the parties' minor child moved to Michigan where the wife filed for divorce. Thereafter, the husband filed for divorce in the Chancery Court for Montgomery County and then filed a second divorce action in the Circuit Court for Davidson County. The trial court in Davidson County dismissed the husband's complaint because the proceeding in Montgomery County was still pending and also determined that the husband had submitted himself to the jurisdiction of the Michigan court. The husband asserts on this appeal that the Davidson County trial court erred by dismissing his divorce complaint and by concluding that the Michigan court had jurisdiction over him. We affirm the dismissal of the husband's complaint. We also find this appeal frivolous, and remand for a determination of the wife's damages.

Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Circuit Court Affirmed

WILLIAM C. KOCH, JR., J., delivered the opinion of the court, in which WILLIAM B. CAIN and PATRICIA J. COTTRELL, JJ., joined.

John T. Maher and Troy L. Brooks, Clarksville, Tennessee, for the appellant, Thomas Edward Knuth.

Lew Conner and Grant C. Glassford, Nashville, Tennessee, for the appellee, Sandra Marie Knuth.

OPINION

Thomas Edward Knuth and Sandra Marie Knuth were married on December 12, 1984, in Michigan where Ms. Knuth was born and raised. Their only child was born on November 3, 1995. The parties moved frequently during their marriage because Colonel Knuth is a Lieutenant Colonel in the United States Army.¹ The parties came to Tennessee in mid-1997 when Colonel Knuth was transferred to Fort Campbell to serve as chief of surgery.

¹Before moving to Tennessee, the parties lived in Colorado for six months, Texas for six months, California for one and one-half years, Hawaii for four years, Maryland for two years, and Georgia for four years.

The parties resided in Nashville after moving to Tennessee. When the parties separated on April 13, 1998, Ms. Knuth and the parties' son traveled to Michigan and moved in with her parents. On April 15, 1998, Ms. Knuth commenced divorce proceedings in the Circuit Court for McComb County, Michigan. Between April 20 and May 5, 1998, the Michigan trial court entered a series of ex parte orders restraining the parties from disposing of their property, directing the parties to maintain the financial status quo, and granting Ms. Knuth temporary custody of the parties' son. The court also granted "reasonable parenting rights" to Colonel Knuth, directed Colonel Knuth to pay child support, and prohibited Colonel Knuth from removing the parties' child from Michigan without the court's permission.

On May 28, 1998, Colonel Knuth filed his own divorce complaint in the Chancery Court for Montgomery County.² This complaint failed to mention the pending divorce proceedings in Michigan. Approximately two months later, Colonel Knuth filed another divorce complaint in the Circuit Court for Davidson County. On this occasion, Colonel Knuth disclosed that there were divorce proceedings pending in Michigan but failed to disclose his pending divorce proceedings in Montgomery County. He also asserted that Ms. Knuth commenced the proceedings in Michigan "to forum shop and manipulate the court system." Thus, by August 1998, the parties were involved in three active divorce proceedings in two states.

At some point in mid-1998, Colonel Knuth moved out of the parties' home in Nashville and took up residence at Fort Campbell. On September 24, 1998, the Michigan court denied Colonel Knuth's motion to dismiss Ms. Knuth's divorce complaint and held that it would assume jurisdiction over all divorce and custody issues. Not to be outdone, the Chancery Court for Montgomery County, at Colonel Knuth's urging, entered an order on November 25, 1998, likewise asserting jurisdiction over the custody issues on the ground that Tennessee was the child's home state.

On January 13, 1999, the Michigan court entered an order granting Colonel Knuth visitation but prohibiting him from removing the parties' child from Michigan "pending communication between this Court and Honorable Muriel Robinson, in the Fourth Circuit Court for Davidson County, Tennessee at Nashville, to determine which state is the appropriate forum to exercise jurisdiction of the child custody determination."

On February 4, 1999, the trial court in Davidson County heard the parties' motions concerning its jurisdiction to grant a divorce and make a custody determination.³ At the hearing, the

²The logic of filing this complaint in Montgomery County is not evident in the record. Although the complaint alleged that the parties had separated in Clarksville, Tennessee, the statistical information in the complaint stated that Colonel Knuth was residing in Davidson County and that Ms. Knuth was residing in Eastpointe, Michigan. Over one year after filing this complaint, Colonel Knuth filed an amended complaint stating that he was a resident of Fort Campbell, Kentucky, that Ms. Knuth was residing in Eastpointe, Michigan, and that the separation had occurred in Nashville, Tennessee.

³By this time, the trial court was aware of the action in Montgomery County. Moreover, the Michigan and Davidson County trial courts had communicated, and the Michigan trial court had informed the Davidson County trial court of its intention to retain jurisdiction.

court stated its intention to “dismiss this petition, [and] direct that the child-custody matters be concluded by the State of Michigan.” When Ms. Knuth’s counsel asked whether the dismissal related only to the complaint for divorce, the court responded that it was “referring to all of it” unless the parties could prove that the Montgomery County proceeding had been dismissed. Nevertheless, the court went on to state its belief that “Michigan can keep . . . jurisdiction over this child-custody and visitation matter.”

To complicate matters even more, Colonel Knuth did not dismiss the Montgomery County proceedings. On February 22, 1999, the trial court in Montgomery County entered an order transferring the case to the trial court in Davidson County. Three days later, Colonel Knuth requested the trial court in Davidson County to consolidate the Montgomery County case with the case pending in Davidson County. Thereafter, the trial court in Davidson County entered two orders. The first order, filed on March 4, 1999, dismissed Colonel Knuth’s complaint. The second order, filed on March 5, 1999, denied Colonel Knuth’s motion to consolidate and transferred the Montgomery proceedings back to the Chancery Court for Montgomery County. Colonel Knuth filed a notice of appeal on April 1, 1999.

I.

Colonel Knuth raises two issues on this appeal. First, he asserts that the trial court in Davidson County erred by dismissing his divorce complaint. Second, he asserts that the trial court in Davidson County erred by determining that the courts in Tennessee lacked jurisdiction to address the issues regarding the custody of the parties’ child. We need only address the first issue because its outcome is dispositive of the case.

When Colonel Knuth filed his divorce complaint in Davidson County, he had already commenced an identical proceeding in the Chancery Court for Montgomery County. The court in Montgomery County had subject matter jurisdiction over the divorce proceeding,⁴ and Colonel Knuth was actively pursuing relief in that proceeding. Accordingly, when the trial court in Davidson County learned of the Montgomery County proceeding, it should have invoked the doctrine of prior suit pending and should have summarily dismissed Colonel Knuth’s divorce complaint. *Lewis v. Muchmore*, 26 S.W.3d 632, 637 (Tenn. Ct. App. 2000); *City of Newport v. Masengill Auction Co.*, 19 S.W.3d 789, 794 (Tenn. Ct. App. 1999). Accordingly, we affirm the trial court’s dismissal of Colonel Knuth’s Davidson County divorce complaint, albeit on slightly different grounds.⁵

⁴ Colonel Knuth himself commenced the Montgomery County proceedings. Accordingly, he is estopped to challenge that court’s jurisdiction or venue.

⁵ The Court of Appeals may affirm a judgment on different grounds than those relied on by the trial court when the trial court reached the correct result. *Continental Cas. Co. v. Smith*, 720 S.W.2d 48, 50 (Tenn. 1986); *Allen v. National Bank of Newport*, 839 S.W.2d 763, 765 (Tenn. Ct. App. 1992); *Clark v. Metropolitan Gov’t*, 827 S.W.2d 312, 317 (Tenn. Ct. App. 1991).

II.

Ms. Knuth asserts that this appeal is frivolous and has requested damages in accordance with Tenn. Code Ann. § 27-1-122 (2000). We have determined that this motion is well-taken because Colonel Knuth did not have a reasonable chance of succeeding on this appeal.

Parties should not be required to bear the cost and vexation of baseless appeals. *Davis v. Gulf Ins. Group*, 546 S.W.2d 583, 586 (Tenn. 1977); *Jackson v. Aldridge*, 6 S.W.3d 501, 504 (Tenn. Ct. App. 1999); *McDonald v. Onoh*, 772 S.W.2d 913, 914 (Tenn. Ct. App. 1989). Accordingly, in 1975, the General Assembly enacted Tenn. Code Ann. § 27-1-122 to enable appellate courts to award damages against parties whose appeals are frivolous or are brought solely for the purpose of delay. Determining whether to award these damages is a discretionary decision. *Banks v. St. Francis Hosp.*, 697 S.W.2d 340, 343 (Tenn. 1985); *Murvin v. Cofer*, 968 S.W.2d 304, 306 n.1 (Tenn. Ct. App. 1997).

A frivolous appeal is one that is devoid of merit, *Combustion Eng'g, Inc. v. Kennedy*, 562 S.W.2d 202, 205 (Tenn. 1978), or one that has no reasonable chance of succeeding. *Davis v. Gulf Ins. Group*, 546 S.W.2d at 586; *Jackson v. Aldridge*, 6 S.W.3d at 504; *Industrial Dev. Bd. v. Hancock*, 901 S.W.2d 382, 385 (Tenn. Ct. App. 1995). Thus, an appeal in which the reviewing court's ability to address the issues raised is undermined by the appellant's failure to provide an adequate record is deemed frivolous because it has no reasonable chance of succeeding. *Brooks v. United Uniform Co.*, 682 S.W.2d 913, 915 (Tenn. 1984); *McDonald v. Onoh*, 772 S.W.2d at 914; *Fields v. Fields*, No. 86-131-II, 1987 WL 7332, *3 (Tenn. Ct. App. March 6, 1987) (No Tenn. R. App. P. 11 application filed).

This appeal presents no debatable questions of law or fact. Colonel Knuth commenced divorce proceedings in Montgomery County and two months later commenced divorce proceedings in Davidson County. Assuming that Montgomery County was an appropriate forum,⁶ Colonel Knuth should have litigated the custody issues in Montgomery County.⁷ Alternatively, he could have dismissed the Montgomery County action and pursued his case in Davidson County. Instead, Mr. Knuth vigorously litigated in both Davidson County and Montgomery County. As a result of these questionable tactical decisions, Ms. Knuth has been forced to litigate in both the trial courts and appellate courts, and she faces the prospect of doing so again in the Montgomery County proceedings. Accordingly, we find this appeal frivolous and remand the case to the trial court for a hearing on damages. Ms. Knuth is entitled to recover the costs and expenses, legal or otherwise, that she incurred defending this appeal.

⁶Ms. Knuth contends that Montgomery County was not a proper forum and that Colonel Knuth filed the divorce complaint in Davidson County only after he realized venue did not lie in Montgomery County. Of course, Colonel Knuth has not conceded that venue does not lie in Montgomery County.

⁷Colonel Knuth states that he pursued this appeal partly because he feared that Ms. Knuth would argue in the Montgomery County court that the Davidson County trial court's decisions regarding the Tennessee courts' custody jurisdiction is somehow binding on the court in Montgomery County. We do not understand how this could be the case in light of the Davidson County trial court's dismissal of the case without reaching any of the substantive custody issues.

III.

We affirm the judgment dismissing Colonel Knuth's complaint for divorce. We remand the case to the trial court to conduct a hearing for the assessment of Ms. Knuth's damages in accordance with Tenn. Code Ann. § 27-1-122 and to dispose of any other matters properly before the court. We tax the costs of this appeal to Thomas Edward Knuth and his surety for which execution, if necessary, may issue.

WILLIAM C. KOCH, JR., JUDGE